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18 UNITED STATES OF AMERICA

19 UNITED STATES DISTRICT COURT

20 FOR THE CENTRAL DISTRICT OF CALIFORNIA

21 UNITED STATES OF AMERICA,

22 NO. CV 17-4443

23 Plaintiff,

24 EX PARTE APPLICATION FOR
25 ISSUANCE OF WARRANT FOR
26 ARREST *IN REM*

27 ONE PAINTING ENTITLED
28 "NATURE MORTE AU CRANE DE
TAUREAU" BY PABLO PICASSO, ET
AL.,

[Proposed Warrant for Arrest in Rem
Lodged Concurrently Herewith]

Defendants.

1 Plaintiff United States of America (“the government”) hereby applies for the
2 issuance of the proposed Arrest Warrant *in Rem* lodged contemporaneously
3 herewith. The arrest warrant *in rem* will allow the government to take the
4 defendant assets into custody so that they may be retained by the United States
5 Marshals Service during the pendency of this action. This application is made
6 pursuant to Rule G(3)(b)(ii) of the Supplemental Rules for Admiralty or Maritime
7 Claims and Asset Forfeiture Actions (“Supplemental Rules”), Federal Rules of
8 Civil Procedure, and is supported by the attached memorandum of points and
9 authorities and the Verified Complaint in this action.

10 Because the Court will not acquire jurisdiction over the defendant assets
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1 until they are arrested, the ex parte notice provisions of Rule 7-19.1 of the Local
2 Rules of Practice for the Central District of California do not apply.

4 | Dated: June 15, 2017

Respectfully submitted,

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

3 Contemporaneously with the filing of this application, plaintiff United States
4 of America (“the government”) has filed a verified complaint in the civil forfeiture
5 action against one painting entitled “Nature Morte au Crane de Taureau” by Pablo
6 Picasso; one collage entitled “Redman One” by Jean-Michel Basquiat; and one
7 photograph entitled “Boy with the Toy Hand Grenade” by Diane Arbus (the
8 “Defendant Assets”). Generally, the government, when initiating a civil *in rem*
9 judicial forfeiture action, has already taken the defendant property into its custody.
10 Where, as here, it has not, the government must ask the Court to issue a warrant for
11 arrest *in rem* to allow the government to take the property into custody, where it
12 will remain subject to the Court’s jurisdiction during the pendency of the action.

II. THE ARREST WARRANT MUST BE ISSUED UPON A FINDING OF PROBABLE CAUSE.

15 Where the government commences a civil forfeiture action against a
16 defendant asset that is already in government custody, the Clerk of the Court “must
17 issue a warrant to arrest the property.” Supplemental Rule G(3)(b)(i). The Clerk’s
18 warrant for arrest *in rem* allows the government to retain custody of the defendant
19 asset, and execution of the warrant perfects the Court’s *in rem* jurisdiction over the
20 asset. *Ventura Packers, Inc. v. F/V Kathleen*, 424 F.3d 852, 853 (9th Cir. 2005).

21 Where the government commences a civil forfeiture action against an asset
22 that is not in government custody or subject to a judicial restraining order at the
23 time of filing, “the Court – on finding probable cause – must issue a warrant to
24 arrest the property.” Supplemental Rule G(3)(b)(ii). The sole question is whether
25 the allegations of the verified complaint, taken as true, are sufficient to establish
26 probable cause to believe that, based on the totality of the circumstances, and with
27 a “common sense view to the realities of normal life,” there is a “fair probability”
28 that the defendant asset is subject to forfeiture on the grounds alleged. *See United*

1 *States v. Real Property at 874 Gartel Drive*, 79 F.3d 918, 922 (9th Cir. 1996) (the
 2 probable cause standard as applied to civil forfeiture seizures “is similar to that
 3 required to obtain a search warrant”); *United States v. Daccarett*, 6 F.3d 37, 50
 4 (2nd Cir. 1993); *United States v. \$149,442.43 in U.S. Currency*, 965 F.2d 868, 876
 5 (10th Cir. 1992) (test for probable cause is the same as applies in other arrests,
 6 searches and seizures).

7 The warrant is to be issued ex parte, as the giving of notice to potential
 8 claimants of the defendant asset occurs only after the warrant has been executed.
 9 This is so because the Court does not obtain jurisdiction over the defendant asset
 10 until it is arrested. *Calero-Toledo v. Pearson Yacht Leasing Co.*, 416 U.S. 663,
 11 679-680 (1974) (seizure of property for forfeiture is like the execution of a search
 12 warrant or the seizure of evidence in a criminal case, acts which must necessarily
 13 occur, in most cases, without prior notice to the owner); *United States v. One Oil
 14 Painting*, 362 F. Supp. 2d 1175, 1183-84 (C.D. Cal 2005). The perfection of the
 15 Court’s jurisdiction over the defendant asset and the giving of notice to potential
 16 claimants are separate concepts. *Id.* Upon issuance, the warrant is to be delivered
 17 to a person authorized to execute it, who may be “a marshal or any other United
 18 States officer or employee,” and must be executed “as soon as practicable.”
 19 Supplemental Rule G(3)(c)(i) and (ii). Here, the warrant will be executed by either
 20 a Deputy U.S. Marshal or a Special Agent of the Federal Bureau of Investigation.

21 **III. CONCLUSION**

22 In the Verified Complaint, the government seeks forfeiture of the Defendant
 23 Assets pursuant to 18 U.S.C. §§ 981(a)(1)(A) and (C), in connection with
 24 violations of 18 U.S.C. §§ 1343 (wire fraud), 1956 and 1957 (money laundering),
 25 2314 (international transportation or receipt of stolen or fraudulently obtained
 26 property), 2315 (receipt of stolen money), and a conspiracy to commit such
 27 offenses. The allegations of the Verified Complaint are sufficient to establish
 28 probable cause to believe that the Defendant Assets are subject to forfeiture. The

government respectfully requests that the Court issue the proposed Warrant for Arrest *in Rem*, so that the government may seize the Defendant Assets and commence providing notice.

Dated: June 15, 2017

Respectfully submitted,

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